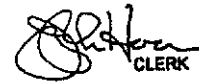


FILED

APR 11 2007


CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELMER FINK, JR., a/k/a Elmer
Eugene Fink, JEANETTE FINK,
BERT GEORGE FINK, ALLIED
COLLECTION, ACCOUNTS
MANAGEMENT, BRISTOL LIVING
TRUST, TRIPLE F LIVING TRUST, and
AURORA COUNTY, a political
subdivision of the State of
South Dakota,
Defendants.

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CIV 04-4130

**MEMORANDUM OPINION
AND ORDER RE: MOTION
FOR PERMISSION TO APPEAL
IN FORMA PAUPERIS**

ELMER FINK, JR, AND JEANETTE
FINK,

Counter-Plaintiffs,

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vs.

UNITED STATES OF AMERICA,
DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY f/k/a
Farmers Home Administration,
Counter-Defendants.

Defendants and Counter-Plaintiffs Elmer Fink, Jr. And Jeanette Fink have filed a motion and affidavit for permission to appeal in forma pauperis. Doc. 68. Although the Court does not dispute that indigence was established in the affidavit, the Court is denying the motion without prejudice because the notice of appeal was not from an appealable order.

DISCUSSION

Plaintiff, United States of America, on behalf of the Department of Agriculture, Farm Services Agency f/k/a Farmers Home Administration, filed a complaint seeking foreclosure of real estate mortgages. Doc. 1. Defendants, Elmer Fink Jr. and Jeanette Fink, and Bristol Living Trust and Triple F Living Trust filed motions to dismiss. Doc. 12. After this Court entered its

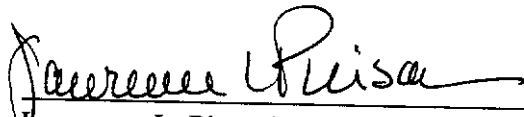
Memorandum Opinion and Order on July 27, 2005, denying the motions to dismiss (Doc. 22), these Defendants filed answers and counterclaims. Doc. 24, 25, 26. Defendants Elmer Fink Jr. and Jeanette Fink then filed a motion entitled "Motion for Declaratory Judgment on Offset Parity Claim, Court Ordered Assignment, and Judgment on Balance of Parity Claim Payment." Doc. 50. The Court dismissed the motion for declaratory judgment after finding it did not have subject matter jurisdiction to proceed with the motion. Doc. 55. The Court then denied the motion for reconsideration of its order dismissing the motion for declaratory judgment. Doc. 59. The notice of appeal filed by Defendants Elmer Fink Jr. and Jeanette Fink is from the orders dismissing the motion for declaratory judgment and denying reconsideration of the dismissal. Doc. 65.

The notice of appeal in this case is not from a final decision of a district court. *See* 28 U.S.C. § 1291. The orders appealed from do not "resolve all issues between the parties." *See Dieser v. Continental Cas. Co.*, 440 F.3d 920, 926 (8th Cir. 2006). Accordingly,

IT IS ORDERED that Defendants Elmer Fink, Jr., and Jeanette Fink's motion for permission to appeal in forma pauperis (Doc. 68) is denied without prejudice.

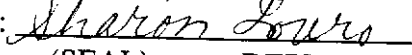
Dated this 11th day of April, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY